

Pennsylvania, the Senator from Arizona, the Senator from Massachusetts, Mr. KENNEDY, for their leadership and Herculean efforts on this legislation. In the spirit of praise I heard just a moment ago from the Senator from New Mexico on bringing judiciousness to this process, I rise in opposition to amendment No. 1166 offered by the very distinguished Senator from Iowa, Mr. GRASSLEY. The amendment would eliminate judicial review of removal proceedings where revocation of a visa is the sole ground for removal. That may sound technical and complex, but the amendment is actually quite simple in the way it works. It means that if the State Department should wrongly decide to revoke a visa, whether through bureaucratic error or misjudgment, and then the Department of Homeland Security tries to remove you from the United States, you have no opportunity to have your case heard in Federal court; the case ends at the Board of Immigration Appeals.

It means a dissident lawfully admitted to the United States on a visitors visa could find himself giving a speech one day and then the very next day learn the Department of State revoked his visa based on false information provided by his home country. The dissident may even risk punishment upon return to his home country. But there will be no means to fight his removal in Federal court. The amendment means that when DHS invokes the ideological exclusion provision which allows the Government to exclude anyone from the country who endorses or espouses terrorism or persuades others to support terrorism, there is no judicial check to make sure that is, in fact, what is going on, and that great power is not being abused.

As U.S. district judge Paul Crotty wrote in an opinion last year, rejecting the Government's efforts to exclude a Swiss citizen who had a visa to teach religion, conflict, and peace-building at Notre Dame University.

While the Executive may exclude an alien for almost any reason, it cannot do so solely because the Executive disagrees with the content of the alien's speech and therefore wants to prevent the alien from sharing this speech with a willing American audience.

That is exactly the kind of case which would be barred by the amendment we are debating. What is the basis for this change? How can it be that review by a Federal court under these circumstances is such a serious burden to the Government that it must be eliminated? Are the courts clogged with these cases? Is it too much to require DHS to submit to a modicum of checks and balances before it exerts its power to expel someone under these circumstances? Judicial review of visa revocation is already severely limited—so severely limited, in fact, that the subject of this amendment is the only area remaining in which somebody can still seek judicial review of a removal order.

Too often, we are obliged to defend basic principles of American democ-

racy—in other circumstances, the great writ of habeas corpus; here, the core principle of separation of powers and judicial review. We should not trample lightly on our founding principles.

I have said over and over that the cornerstone of any comprehensive immigration package must be strengthened security at our borders, enhanced workplace enforcement, and a sensible, practical solution for the 12 million people already living illegally in this country. But strong security means smart security, and smart security must include respect for the administration of justice, including our great American system of checks and balances, and a realization that sometimes the Government gets it wrong.

This amendment, by further limiting the authority of Federal courts to hear removal cases, goes too far. I ask my colleagues to oppose it.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Florida is recognized.

(The remarks of Mr. NELSON of Florida are printed in today's RECORD under "Morning Business.")

Mr. NELSON of Florida. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I rise to speak on the immigration bill, the underlying amendment.

I am delighted we are taking up this issue dealing with immigration. I am glad we are debating this important issue in the Senate and that the majority leader has dedicated 2 weeks to do this bill. I think we need at least that period of time to delve into this issue. I have worked on it before. I have served on the Judiciary Committee. It is a tough topic, and it needs a lot of debate.

Immigration is an issue which has seized Americans across the Nation. People are torn trying to balance two fundamental American principles: one, of being a rule of law nation; and, second, trying to be a compassionate society. Here I think we do not need to

mitigate either of these desires, that we can do both of them. But it is difficult and the details matter.

America is a nation of both justice and compassion. The two are not mutually exclusive. But reconciling the two is sometimes difficult, as we find in this debate.

Currently, we have, we think, somewhere around 12 million illegal immigrants in our country. The number is growing. In 1987, there were roughly 4 million undocumented immigrants in our country; in 1997, there were roughly 7 million; and today, in 2007, there are somewhere around 12 million. In addition, according to the Pew Hispanic Center, annual arrivals of illegal immigrants have exceeded the arrival of legal immigrants since 1985. That is not the trend we want.

The reality is our immigration system is seriously broken and needs to be fixed. Some people think the solution is to grant undocumented immigrants amnesty as we did in 1986, but that won't work. Others think the solution to the problem is to simply enforce the laws we have and kick everyone out. We have taken a serious look at this option, and although our enforcement efforts over the last year have dramatically increased, I do not believe this answer alone will work either.

The office responsible for detaining and removing illegal immigrants is the Office of Detention and Removal, DRO. It is a division of U.S. Immigration and Customs Enforcement, the largest investigative agency in the Department of Homeland Security. You may be surprised to know that the DRO is actually quite large, despite the relatively small impact they are able to have. DRO includes 6,700 authorized employees, including nearly 5,300 law enforcement officers and 1,400 support personnel. To put this in perspective, the number of DRO law enforcement officers is just under half as large as the number of FBI special agents. With these resources in 2006, ICE, Immigration and Customs Enforcement, removed 187,513 illegal aliens from the country—a record for the agency and a 10-percent increase over the number of removals during the prior fiscal year. If you do the math, though, that works out to roughly 28 illegal aliens deported per DRO employee per year or 35 deportations per law enforcement officer per year. At that pace, if we shut down the border to a point at which no one crosses illegally, and successfully end 100 percent of the visa overstays and double the number of DRO agents, then it will take us 25 to 30 years to deport the estimated 11 million to 13 million illegal aliens who are currently in the United States.

As a matter of national security, we can't afford to wait 30 years to know who is in our country illegally. For the sake of our national security and our Nation's future, we need to solve the immigration problems facing our Nation now. The comprehensive bill before the Senate goes a long way toward

enabling us to fix our immigration system and the problem of illegal immigration. I might point out that people are not opposed to immigration, they are opposed to illegal immigration, and we need to get the legal system to work and fix the problems in it. I believe we need a multifaceted approach to the complex immigration problem we are facing, and the compromise bill before the Senate now will enable us to take significant strides toward fixing the problem.

That said, there are certain aspects of the bill I wish to change. I look forward to the opportunity to do so through the amendment process and to see whether I can support the final product.

With respect to solving the immigration problem, we must first and foremost secure the border, and this bill appears to do that. Section 1 of the bill ensures that we don't repeat one of the biggest mistakes of the 1986 amnesty of implementing immigration reforms without increasing border and worksite enforcement. The triggers in section 1 require the DHS Secretary to certify in writing the following border and worksite enforcement measures are funded, in place, and in operation before—before—initiating a guest worker program or issuing Z visas to current undocumented immigrants. These are the triggers: 18,000 Border Patrol hired; construction of 200 miles of vehicle barriers and 370 miles of fencing; 70 ground-based radar and camera towers along the southern border; the deployment of 4 unmanned aerial vehicles and supporting systems; ending catch and release; resources to detain up to 27,500 aliens per day on an annual basis; the use of secure and effective identification tools to prevent unauthorized work; and the receiving, processing, and adjudication of applications for Z status.

I go through the details because the details really matter in this bill.

In addition, the bill authorizes enhanced border enforcement, including a national strategy for border security, 14,000 new Border Patrol agents by 2012, doubling the current force; 2,500 new Customs and Border Protection officers by 2012; 3,000 new DHS investigators by 2010; 24,000 new detention beds by 2010; enhanced surveillance, using unmanned aerial vehicles, as I mentioned; cameras, sensors, satellites, and other technologies.

That is not enough for just taking care of the border. We also have to go to the workplace. Most people are attempting to enter the United States illegally to work. I think we have to focus on what we do at the workplace. I think we need to implement a smart worksite enforcement system, smart and tough. The primary reason for illegal immigration, as I stated, is employment. If we eliminate a person's ability to unlawfully gain employment, then we will dramatically reduce the incentive for illegal immigration. This bill includes several measures that enhance

our ability to enforce immigration laws at the workplace: increasing penalties on employers who knowingly hire illegal immigrants; requiring DHS to issue a tamper-resistant work authorization document with biometric information; allowing the Commissioner of Social Security to share information with DHS so they can go after those who use fraudulent Social Security cards to gain employment; creating an employment eligibility and verification system that requires employers to electronically verify a prospective employee's work authorization.

The robust worksite enforcement system included in this bill fixes a huge hole in our current system and should curtail the use of false documents to fraudulently obtain employment.

Now let's look at the immigration system reforms. The most significant immigration reform this bill makes is the implementation of a merit-based immigration system—and this is a big shift—to choose the best and the brightest of those coming into our country. This doesn't mean we should only allow rocket scientists or brain surgeons, but education is and should be a factor. The merit-based system under the bill does that. It sets up a system in which immigrants can earn points in four categories: education, employment, English proficiency, and family.

In addition to the merit-based system, this bill ends chain migration for extended family, while preserving family unification for the immediate family. I think that is an important distinction, that we want family reunification for immediate, nuclear family, but we don't want the chain migration system for extended family members. This is an important change.

I am one of the staunchest supporters of family in the Senate. I don't think our immigration system should blindly favor, though, non-nuclear families such as siblings and adult children over skilled workers who are coming to apply their trade and contribute to our economy. It seems to me this is an appropriate balance. Throughout this bill, what we are trying to accomplish is an appropriate, workable balance for the good and the future of this Nation.

On the temporary guest worker program, once we are able to secure the border and implement worksite enforcement enhancements, we need to reform our immigration system to create sufficient legal means for well-meaning workers to come to our country and to work. The temporary guest worker program in this bill does that, while at the same time protecting American workers and wages by: requiring employers to advertise jobs to U.S. workers first; requiring employers to advertise pay, a wage equal to that of an average wage for the particular job or industry, particular in that region of the country; and prohibiting a temporary guest worker from working

in a county that has 7 percent unemployment or higher.

I think there are some important changes that need to be made in the bill. As I have said, the compromise bill before us does a lot of good, but I think it is far from perfect and needs improvement.

To give some examples, section 601(h) of the bill gives certain immigration benefits to undocumented immigrants who seek "probationary" status, and states that an undocumented immigrant can obtain no probationary benefits until the alien has passed all appropriate background checks, or until the next business day, whichever is sooner. So you have a 24-hour check period. That is insufficient, if they want to look into the background of an individual seeking this probationary status. I will seek to change that particular provision. The impact of this provision is that 12 million or more undocumented immigrants could receive lawful status, the right to work, and other such benefits even if a background check cannot be completed in time.

I think the problems with this provision are significant and obvious. First, in a post-9/11 world, it is misguided at best and dangerous at worst to grant millions of people unlawfully present in the United States lawful status, even if a background check has not been completed. That is not wise. Second, there is no evidence that the Department of Homeland Security is capable of conducting cross-departmental and cross-governmental background checks, let alone a million of them, or millions of them, in a 24-hour time period. Third, many records relevant to a background check are not electronic and/or are not in possession of or otherwise accessible to the Federal Government, suggesting that more than one business day may be required for a thorough check, and a thorough check we must do. This is an important issue with potentially grave consequences for our national security.

I have filed an amendment to change this provision so no one would receive any immigration benefits without passing a background check. I would urge my colleagues to support this amendment.

In addition, I think the bill should require followup background checks when Z visa holders apply to extend their visa beyond the initial 4 years. As the bill is drafted, it leaves that decision to perform a background check up to the Secretary of Homeland Security.

I think we need to be able to have removal proceedings for ineligible Z visa applicants. Section 601(d) of the bill lays out certain grounds of ineligibility for a Z visa, which include multiple criminal convictions, controlled substance trafficking, trafficking in persons, and even terrorist activity.

The very same section also states:

Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

The obvious question is: Why not? Why should DHS not be required to immediately begin removal proceedings against someone who is ineligible for a Z visa because they are a criminal or a terrorist? I think DHS should be required to begin removal proceedings or at the very least take steps toward removing such people from the country.

The two main reasons for providing undocumented immigrants the ability to obtain a Z visa are to separate those who are here with good intentions to work and support their families from those who intend to do us harm; and second, to create a system where people have a legal status. In order to successfully do this, this provision needs to be changed so when an individual is found to be ineligible to remain in the country legally under this program, they are removed.

In conclusion, I look forward to continuing this debate on this bill on these issues I have identified and others to strengthen this bill. As many Members have said, this bill is not perfect and can certainly be improved in ways I have noted and in others. But we can't use the bill's imperfections as an excuse for doing nothing for a system that is clearly broken.

I look forward to offering these amendments to improve the bill, and I look forward to hearing some of the ideas my colleagues in the Senate have as well. At the end of the day, I hope we can pass a bill the President can sign, so we can say we did something to improve America by enacting immigration legislation that secures our borders, restores respect for our laws, and creates an immigration system that works.

Mr. President, I yield the floor.

Mr. OBAMA. Mr. President, I ask unanimous consent that at 2:20 p.m. today, there be 4 minutes of debate prior to a vote in relation to the Binghamman amendment No. 1169, with the time divided as follows: 2 minutes under the control of Senator BINGAMAN, and 1 minute each under the control of Senators KENNEDY and SPECTER or their designees; that without further intervening action or debate, the Senate proceed to vote in relation to the amendment, with no second-degree amendment in order prior to the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. OBAMA. Mr. President, I wish also to speak to the bill.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, last year, I spoke at one of the marches in Chicago for comprehensive immigration reform. I looked out across the faces in the crowd. I saw mothers and fathers, citizens and noncitizens, people of Polish and Mexican descent, working Americans, and children. What I know is these are people we should embrace, not fear. We can and should be able to see ourselves in them.

I do not say that to diminish the complexity of the task. I say it because

I believe that attitude must guide our discourse. We can and should be able to fix our broken immigration system and do so in a way that is reflective of American values and ideals and the tradition we have of accepting immigrants to our shores.

I think the bill that has come to the floor is a fine first step, but I strongly believe it requires some changes. I am working with others to improve it.

In approaching immigration reform, I believe that we must enact tough, practical reforms that ensure and promote the legal and orderly entry of immigrants into our country. Just as important, we must respect the humanity of the carpenters and bricklayers who help build America; the humanity of garment workers and farmworkers who come to America to join their families; the humanity of the students like my father who come to America in search of the dream. We are a Nation of immigrants, and we must respect that shared history as this debate moves forward.

To fix the system in a way that does not require us to revisit the same problem in twenty years, I continue to believe that we need stronger enforcement on the border and at the workplace. And that means a workable mandatory system that employers must use to verify the legality of their workers.

But for reform to work, we also must respond to what pulls people to America and what pushes them out of their home countries. Where we can reunite families, we should. Where we can bring in more foreign-born workers with the skills our economy needs, we should. And these goals are not mutually exclusive. We should not say that Spanish speaking or working class immigrants are only good enough to be temporary workers and cannot earn the right to be part of the American family.

With regard to the most pressing part of the immigration challenge—the 12 million undocumented immigrants living in the U.S.—we must create an earned path to citizenship. Now, no one condones unauthorized entry into the United States. And by supporting an earned path to citizenship, I am not saying that illegal entry should go unpunished. The path to permanent residence and eventual citizenship must be tough enough to make it clear that unauthorized entry was wrong.

But these immigrants are our neighbors. They go to our churches, and their kids go to our schools. They provide the hard labor that supports many of the industries in our country. We should bring them out of hiding, make them pay the appropriate fines for their mistakes, and then help them become tax paying, law-abiding, productive members of society.

I am heartened by the agreement that we have to put all 12 million undocumented immigrants on a path to earned citizenship. I applaud those who worked on this compromise. But there

are other parts of the compromise deal before us that cause me serious concern. Let me briefly address some of those concerns.

In order to stem the demand for illegal workers, we need a mandatory employment verification system that is actually mandatory. It needs to allow employers to check with the Department of Homeland Security to see that their employees are legally eligible to work in the United States. This is something I worked on last year. But this year's version of the employment eligibility verification system would give DHS too much power to force the screening of everyone working in America without appropriate safeguards. I will be working with others to offer an amendment to make this provision closer to what we proposed last year.

As for the guestworker program in the bill, it proposes to create a new 400,000 person annual temporary worker program that could grow to 600,000 without Congressional approval. And it expands the existing seasonal guestworker programs from 66,000 up to 100,000 in the first year and 200,000 after that. At the end of their temporary status, almost all of these workers would have to go home. That means at the end of the first three years, we would have at least 1.2 million of these new guestworkers in the country with only 30,000 of those having any real hope of getting to stay. I believe we are setting ourselves up for failure, and that will just create a new undocumented immigrant population.

As we have learned with misguided immigration policies in the past, it is naive to think that people who do not have a way to stay legally will just abide by the system and leave. They won't. This new group of second-class workers will replace the current group of undocumented immigrants, placing downward pressure on American wages and working conditions. And when their time is up, they will go into the shadows where our current system exploits the undocumented today.

I will support amendments aimed at fixing the temporary worker program that Senator BINGAMAN and others will be offering. And if we're going to have a new temporary worker program, those workers should have an opportunity to stay if they prove themselves capable and willing to participate in this country.

But the most disturbing aspect of this bill is the point system for future immigrants. As currently drafted, it does not reflect how much Americans value the family ties that bind people to their brothers and sisters or to their parents.

As I understand it, a similar point system is used in Australia and Canada and is intended to attract immigrants who can help produce more goods. But we need to consider more than economics; we also need to consider our Nation's unique history and values and what family-based preferences are designed to accomplish. As currently